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Nos. 13-354, 13-356

IN THE

Supreme Court of the United States

KATHLEEN SEBELIUS,
SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.,
Petitioners,

v.

HOBBY LOBBY STORES, INC., ET AL.,
Respondents.

CONESTOGA WOOD SPECIALTIES CORP., ET AL.,
Petitioners,

v.

KATHLEEN SEBELIUS, ET AL.,
Respondents.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURTS OF APPEALS
FOR THE TENTH AND THIRD CIRCUITS, RESPECTIVELY

Brief of *Amicus Curiae*
John A. Ryan Institute for Catholic Social Thought
In Support of Hobby Lobby, Conestoga, et al.

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INTEREST OF *AMICUS CURIAE*[1]

The John A. Ryan Institute for Catholic Social Thought ("Ryan Institute") is an academic research center at the University of St. Thomas in Saint Paul, Minnesota. It is dedicated to examining the intersection of Catholic social tradition and business theory, and working with business leaders to engage the practical challenges of organizational life and the spiritual and moral claims of faith. The Ryan Institute has a direct and substantial interest in establishing the legal proposition that the protections of the Religious Freedom Restoration Act and Free Exercise Clause of the First Amendment extend to all corporations manifesting religious beliefs.

SUMMARY OF THE ARGUMENT

Nothing inherent in the legal form or status of a corporation precludes religious motivations and ideals as the basis, or one of the bases, of the association of human persons comprising a corporation. This is true regardless of whether the corporation is recognized as a non-profit or for-profit business. A business is a specialized human association organized for the purpose of providing

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[1] Pursuant to this Court's Rule 37.3(a), all parties have consented to the filing of this brief. Hobby Lobby's letter evidencing such consent has been filed with the Clerk of the Court, and all other parties have granted blanket consents. Further, pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, nor did such counsel or party make a monetary contribution to the preparation or submission of this brief. Only *amicus curiae* made such a monetary contribution.

goods or services to others. Many businesses adopt the legal form of corporations to facilitate the pooling of capital, the refinement of skills and services, and to allocate the financial liabilities and rewards among the human persons comprising the association. None of these actions of pooling capital, refinement of skills and services, or allocation of financial liabilities and rewards are inherently inimical to or inconsistent with religious purpose or beliefs. Thus the decision by a human person or association to embrace the corporate legal status does not preclude manifestation of religious beliefs in the corporate identity, mission, stewardship of resources, or other corporate actions. These religious beliefs and actions are entitled to protection under the Religious Freedom Restoration Act and Free Exercise Clause of the First Amendment.

ARGUMENT

The threshold question in these cases is whether the Religious Freedom Restoration Act and Free Exercise Clause of the First Amendment afford protection to closely-held corporations seeking to act in accordance with the religious beliefs of the owners. In answering this question, it is important to note that not all corporations are identical and the diversity in corporate cultures is the product of deliberate choices made by the people comprising the human association comprising the corporation. These choices, when religiously motivated, are entitled to legal protection under the Religious Freedom Restoration Act and Free Exercise Clause of the First Amendment.

I. Corporations as associations of human persons act in accordance with the beliefs of those persons.

The fundamental error inherent in the opinion of the Court of Appeals for the Third Circuit below is that corporations exist completely independent of the people who create, own and operate them. *Conestoga Wood Specialties Corp. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 724 F.3d 377, 388 (3rd Cir. 2013) ("[s]ince Conestoga is distinct from the Hahns, the Mandate does not actually require the Hahns to do anything."). *Accord Autocam Corp. v. Sebelius*, 730 F.3d 618 (6th Cir. 2013).[2]

This ruling is contrary to reason, experience, and this Court's jurisprudence. Corporations are not found in the state of nature, nor do they come into being absent human agency—agency exercised both by the community of persons comprising the state that, subject to constitutional limitations, defines the legal requirements, rights, and duties of those

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[2] This ruling directly conflicts with the judgments of federal courts of appeals in the Third, Seventh, Ninth, Tenth and DC Circuits, all of which recognize either the right of a closely-held corporation or its owners to assert religious liberty claims. *See Korte v. Sebelius*, 735 F.3d 654 (7th Cir. 2013) (owners and closely-held corporation can assert religious liberty claims); *Annex Medical, Inc. v. Sebelius*, 2013 WL 1276025 (8th Cir. Feb 01, 2013) (corporation could assert religious liberty claims); *Stormans, Inc. v. Selecky*, 586 F.3d 1109 (9th Cir.2009) (pharmacy owned by family corporation could raise religious objections to state requirement that it stock abortifacients); *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. June 27, 2013) (closely-held corporation could assert religious liberty claims); and *Gilardi v. U.S. Dep't of Health & Human Servs.*, 733 F.3d 1208 (D.C.Cir.2013) (owners of closely-held corporation could assert religious liberty claims).

seeking to associate and act through a corporate form, and by those persons who form the association that is "incorporated."

This Court has long rejected the claim that citizens lose all constitutional rights when they choose to assume the legal form of a corporation.

> "The Massachusetts court did not go so far as to accept appellee's argument that corporations, as creatures of the State, have only those rights granted them by the State. The court below recognized that such an extreme position could not be reconciled either with the many decisions holding state laws invalid under the Fourteenth Amendment when they infringe protected speech by corporate bodies, or with decisions affording corporations the protection of constitutional guarantees other than the First Amendment.

First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 778 n. 14 (1978) (citations omitted).

Given this Court's recognition that corporations can exercise a variety of constitutional rights including speech, the question then becomes: "Is there something unique to the exercise of religion that makes it 'purely personal' or contrary to history, and purpose of the Free Exercise Clause or the provisions of Religious Freedom Restoration Act?" *Id.* Amicus leaves to others, more expert in constitutional history and statutory interpretation the second prong of this test and turns to address

the Third Circuit's ruling that religious belief and practice is beyond the capacity of a corporation.

II. Corporate identity, mission, and actions may reflect religious beliefs.

In rejecting the religious liberty claims of Conestoga Wood Specialties Corporation ("Conestoga") the Third Circuit opined that corporations do not "do not pray, worship, observe sacraments or take other religiously-motivated actions separate and apart from the intention and direction of their individual actors." *Conestoga Wood Specialties Corp. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 724 F.3d 385 (quoting with approval *Hobby Lobby Stores, Inc. v. Sebelius*, 870 F.Supp. 2d 1278, 1291 (W.D.Okla.2012), rev'd *en banc*, 723 F.3d 1114 (10th Cir. 2013). The court does not elaborate on this statement, instead relying upon it as a self-evident truth.

Yet in fact every corporate act is only taken based upon the intention and direction of an individual or a community of actors within the corporation. This is as true of secular acts as it is religious acts. Nor does the court explain the existence and legal recognition of distinctively religious corporations under a variety of state and federal laws. *E.g.* Minn. Stat. Ann. § 315.10 (describing powers of religious corporations).

There is a huge diversity of businesses and corporate cultures in the United States. This diversity reflects the fact that corporations are associations of people and people have diverse interests, skills, and aspirations.

> [B]usinesses are collaborative associations that draw people together . . . because they are attracted by the activities and ambitions of the organization. Real businesses are rarely organized by shareholders seeking an investment; they are almost always organized by people captivated by an idea who turn to capital markets only after they have proven that their idea can attract and hold employees and customers.

Robert G. Kennedy, *Corporations, Common Goods, and Human Persons*, 4 Ave Maria L. Rev. 1, 26-27 (2006).

Like the owners of Hobby Lobby and Conestoga, many people establishing or directing corporations do so as expression of their religious beliefs in service to God and neighbor.

> Business is inherently other-centered: a business joins together people's gifts, talents, energies and skills to serve the needs of others. This in turn supports the development of the people who do the work. The tasks they perform in common bring forth the goods and services needed by a healthy community.

Vocation of the Business Leader: A Reflection, ¶ 41 (Pontifical Council for Peace and Justice pub. 2012) at http://www.stthomas.edu/cathstudies/cst/VocationBusinessLead/VocationTurksonRemar/VocationBk3rdEdition.pdf.

The fact that people found and operate corporations that generate profit does not defeat their religious motivation.

III. Pursuit of profit does not foreclose reliance on religious beliefs or pursuit of religious objectives.

There is nothing inherent in profit that converts business activities from sacred to secular.

> The Church acknowledges the legitimate role of profit as an indication that a business is functioning well. When a firm makes a profit, this means that productive factors have been properly employed and corresponding human needs have been duly satisfied. But profitability is not the only indicator of a firm's condition. It is possible for the financial accounts to be in order, and yet for the people--who make up the firm's most valuable asset--to be humiliated and their dignity offended. Besides being morally inadmissible, this will eventually have negative repercussions on the firm's economic efficiency. In fact, the purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a community of persons who in various ways are endeavoring to satisfy their basic needs, and who form a particular group at the service of the whole of society. Profit is a regulator of the life of a business, but it is not the only one; other human and moral

> factors must also be considered which, in the long term, are at least equally important for the life of a business.

Pope John Paul, II, Encyclical Letter, *Centesimus Annus*, ¶ 35 (1991).

Bob Wahlstedt, a founder of Reell Precision Manufacturing in St. Paul, Minnesota, a closely-held corporation puts it more colloquially.

> We do not define profits as the purpose of the company, but we do recognize that reasonable profitability is necessary to continue in business and to reach our full potential. We see profits in much the same way that you could view food in your personal life. You probably do not define food or eating as the purpose of your life, but recognize that it is essential to maintain your health and strength so you can realize your real purpose.

Michael Naughton, *The Corporation as a Community of Work: Understanding the Firm within the Catholic Social Tradition*, 4 Ave Maria L.Rev. 33, 55 (2006).

The Third Circuit erred in its failure to recognize that closely-held corporations act only upon the intentions and motivations of their founders and that religious beliefs govern the economic activities of many corporate shareholders independent of whether those corporations are characterizes as for-profit or non-profit.

CONCLUSION

This Court should affirm the right to a religious freedom exemption from the abortifacient mandate for corporations manifesting religious beliefs in their corporate identity, mission, or other corporate actions.

Respectfully submitted,

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